

ENTERED

October 04, 2017

David J. Bradley, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

<p>EXXON MOBIL CORPORATION,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>UNITED STATES OF AMERICA,</p> <p style="text-align: center;">Defendant.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Civil Action Nos. H-10-2386, H-11-1814</p>
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FIFTH AMENDED SCHEDULING AND DOCKET CONTROL ORDER

This Fifth Amended Scheduling and Docket Control Order (“Order”) controls the schedule for the Phase 2 discovery and pre-trial and trial work on these two cases. Phase 2 will address and resolve the following issues:

- (a) the allocation of past and future response costs among the responsible parties under 42 U.S.C. § 9613(f), and related technical or historical issues;
- (b) whether the costs claimed were or are necessary costs of response consistent with the National Contingency Plan (40 C.F.R. Part 300 *et. seq.*);
- (c) additional cost recoverability issues;
- (d) whether any claims are time-barred in whole or in part under the applicable statute of limitations; and
- (e) whether the United States is entitled to any relief on its counterclaims for contractual indemnification based on Plancor lease agreements.

The scope of written, fact witness and expert witness discovery for Phase 2 is limited to items (b) through (e), except as otherwise noted below. However, nothing in this order precludes the further deposition of any expert serving a supplemental report, regardless of the issues that report addresses.

Any prior stipulation and order or protective order governing Phase 1 discovery conducted applies to any Phase 2 discovery. Any issues that the parties previously agreed or contended should be excluded from Phase 1 and reserved for a subsequent phase of this litigation is within the scope of Phase 2.¹

The following scheduling provisions apply to the remaining work:

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| 1a. | December 5, 2017 | DISPOSITIVE MOTIONS
The deadline for the parties to file any dispositive motion regarding any Phase 1 issue that has not been resolved by the Court, together with any Phase 2 issue. |
| 1b. | January 26, 2018 | The deadline for a response in opposition to any dispositive motion filed by the other party. |
| 1c. | February 28, 2018 | The deadline for a reply to any response in opposition filed by the other party. |
| 1d. | March 20, 2018 or as set | Oral argument hearing to be held in Courtroom 11-B at 8:30 a.m. on any dispositive motion either party files. |
| 2a. | April 24, 2018 | PRETRIAL MOTIONS DEADLINE
The deadline for the parties to file any pretrial motion |
| 2b. | May 14, 2018 | The deadline for a response in opposition to any pretrial motion. |

¹ To the extent either party was served interrogatories, requests for documents or requests for admissions during Phase 1, but the party objected on the grounds that the discovery request solely concerned a Phase 2 issue, and did not substantively respond, these prior discovery requests are cancelled. The party serving these requests has the right to re-serve the same requests after discovery for Phase 2 begins.

3. June 12, 2018

JOINT PRETRIAL ORDER

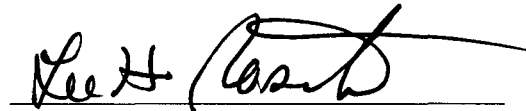
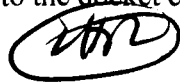
The Joint Pretrial Order shall contain the pretrial disclosures required by Rule 26(a)(3). Plaintiff is responsible for timely filing the complete Joint Pretrial Order. Failure to file a Joint Pretrial Order timely may lead to dismissal or other sanction in accordance with the applicable rules.

4. June 19, 2018

DOCKET CALL

Docket Call will be held at 2:00 p.m. in Courtroom 11-B, United States Courthouse, 515 Rusk, Houston, Texas. No documents filed within 7 days of the Docket Call will be considered. Pending motions may be ruled on at docket call, and the case will be set for trial as close to the docket call as practicable.

There will be NO extensions.
SIGNED on October 4, 2017, at Houston, Texas.



Lee H. Rosenthal
United States District Judge